

**California Commission
on
Health and Safety and Workers' Compensation**

MINUTES OF MEETING

Meeting Day and Date: Thursday, December 18, 1997

Meeting Location: Department of Consumer Affairs
400 "R" Street
First Floor Hearing Room
Sacramento, California

Commission Members Present:

Chairman James J. Hlawek
Commissioner Leonard McLeod
Commissioner Gerald O'Hara
Commissioner Tom Rankin
Commissioner Kristen Schwenkmeyer
Commissioner Robert B. Steinberg
Commissioner Darrel "Shorty" Thacker
Commissioner Gregory Vach

Commission staff:

Christine Baker, Executive Officer of the Commission

I. Call to Order

Chairman James J. Hlawek called the meeting to order at 10:00 a.m.

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Welcome

Chairman Hlawek rearranged the agenda for this meeting by bringing item IV (Report on Industrial Medical Council Activities) up for discussion immediately to accommodate Dr. MacKenzie's schedule.

Adoption of Minutes

Chairman Hlawek asked for a motion regarding the minutes of the Commission meeting on September 18, 1997, which had been submitted for approval by Christine Baker. Commissioner Rankin moved that the minutes be adopted and Commissioner O'Hara seconded this motion. There were no objections and the motion passed unanimously.

II. Report on Industrial Medical Council Activities - Allan MacKenzie, M.D.

Dr. Allan MacKenzie, Executive Medical Director of the Industrial Medical Council reported on recent IMC activities and accomplishments. He said that the mission statement of the IMC is to provide quality care for the injured worker at a reasonable cost. This statement has been the driving force behind all of the IMC activities in the last two years. He said that for the first time, the IMC is up to date with all of its mandates.

With the successful completion of the IMC treatment guidelines, facilitating the fee schedule task force meetings, the rewrite of the physician manual, and the recent success of the educational conference for treating physicians, it is the IMC's opinion that it has just completed the most successful year of accomplishment in its eight year history.

The most significant achievement in the last year was the adoption of the IMC treatment guidelines as advisory regulations. Dr. MacKenzie opined that they are good guidelines and believe that they will be used, primarily because they have gone through the cauldron of public hearing and have withstood challenges from the workers' compensation community. Copies of all guidelines were distributed to the Commissioners.

In front of each guideline is a CQI header that states this guideline is an opportunity for continuous quality improvement and will be reviewed as frequently as is reasonable and necessary. Dr. MacKenzie stated that the IMC has determined that the frequency shall be at least every twelve to eighteen months.

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Dr. MacKenzie reported that the Physician's Guide had been updated. He said that a second edition would be available early in 1998.

Customer service has also been a focus of the IMC. They have simplified and improved QME forms, undertaken an effort to streamline the QME application and appointment process, the QME satisfaction surveys, updated the chiropractic certification program, the QME correspondence protocol, and have almost doubled the QME/AME report survey. Their annual report will be delivered on time to the DWC Administrative Director by January 1, 1998.

He also reported that the number of field investigations, referrals to prosecutors and IMC disciplinary actions are up sharply. Outreach programs have been further developed such as the fraud hotline, the IMC Facts on Demand, a web page, and the publication of the QME Quarterly, Medically Speaking. Additionally, IMC staff went on the road with their guidelines and spoke to a significant cross-section of the community, including one hundred and fifty WCAB judges.

Dr. MacKenzie expressed his distress that the IMC is sometimes used as a whipping boy for things that go badly in workers' compensation. The old IMC image lingers on - such as the recent WCRI report that the IMC is incompetent or the RAND permanent disability report which misstates that the IMC has not done a good job of educating.

Currently, there is criticism of the performance of treating physicians. He stated that the IMC is one of the few agencies which is taking concrete steps to determine what it is that treating physicians need to know, distilling that material, and serving it in manageable bites. They are doing these things despite the fact that it is not the IMC's mandated responsibility. They have introduced a four-phase approach to the dilemma of educating the treating physician. The educational conference for treating physicians was the first phase.

Looking toward the future, the IMC is taking part in the Commission's PD policy and technical advisory committees. The IMC will continue to expand its communication and education resources for QMEs and treating physicians through its web site, fax on demand, publications, and public speaking.

Dr. MacKenzie completed his remarks by what he termed as "issuing a challenge to the Commission". He asked CHSWC to take a leadership role in assessing the burden of paper within the DWC, IMC, and WCAB and make recommendations as to what technology is available and how these agencies can benefit from new technology, such as storing records on CD-ROM and the electronic transmission of reports and billing.

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Commissioner Vach complimented Dr. MacKenzie on the IMC educational conference held in November. He believes it is appropriate to continue the effort and is glad that the IMC is doing so. He indicated that he is more satisfied with the IMC than in the past. He agreed that there is too much paperwork in the workers' compensation system and that there are probably ways to simplify it but that it needs to be done in conjunction with the DWC. He will be asking Casey Young during his presentation to elaborate on exactly where the system is headed.

Commissioner Vach asked Dr. MacKenzie to what extent the treatment guidelines are being followed. He emphasized that guidelines are only useful if they are followed and that many guidelines are not followed since they are voluntary and not mandatory.

Dr. MacKenzie replied that there is a whole science of how to implement treatment guidelines. Some of the process involves the utilization aspect and the IMC is working on that with the DWC. The second thing is that once the guidelines are written, people know what the expected course of action is and physicians tend to follow guidelines. They don't like to be different from other physicians. Generally this is true of 95% of the physician community. But the guidelines are written for the other 5% of the physician community. The other 95% will continue to do well with or without guidelines. But the 5% of physicians who overutilize ineffectual treatments or underutilize good treatments are the ones who need guidelines and drive the guideline process for the whole community. Dr. MacKenzie stated that he has no doubt that people will follow guidelines; especially the treatment guidelines which have gone through the cauldron of public hearing.

Commissioner Vach then asked about enforcement. He said that if the guidelines are going to be used then consideration should be given into turning them into some kind of realistic practice for people who make claims decisions. He also asked if Dr. MacKenzie thinks that there is a need to educate people at the claims decision level.

Dr. MacKenzie replied that education is key. He also said that making guidelines mandatory does not work. Guidelines are voluntary and follow a consensus process in which everybody is brought in. This is the reason why the IMC has spent so much time in trying to educate the public. They spoke to a couple thousand people over the summer including SCIF adjusters, Blue Cross, Blue Shield, and 150 WCAB judges. With several exceptions, the WCAB judges thought that they were good guidelines that they would use. They made some criticisms that have since been incorporated in the guidelines and the IMC will continue to incorporate their suggestions. Similarly the SCIF people thought that the guidelines had particular merit in those areas in which there was great controversy. They indicated that they would use the guidelines particularly in those areas because they would be less likely to get into trouble because the guidelines had been through the hearing process.

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III. Election of Commission Chairman for 1998

Chairman Hlawek opened the floor for nominations for the Chairman of the Commission for 1998.

Commissioner O'Hara nominated Tom Rankin, noting that it is labor's turn to fill the position of Chairman. Commissioner Thacker seconded the nomination. There were no other nominations and Commissioner Rankin was voted in as the 1998 Chairman with seven votes and one abstention from Commissioner Vach.

Commissioner Hlawek welcomed Chairman Rankin as the 1998 Chairman and thanked the Commission staff for their work and support during his year as Chairman.

IV. Report on Division of Workers' Compensation Activities - Casey L. Young

Casey L. Young, Administrative Director of the Division of Workers' Compensation, began his report by noting the excellent series about the workers' compensation system that recently ran in the Santa Rosa *Press Democrat* newspaper. He said that everyone in the workers' compensation community probably has something to "quibble about" regarding the series. But despite these reservations, Mr. Young stated that it was a very unique, well researched, and well written series of articles from the injured workers' perspective and should be required reading in the workers' compensation community.

DWC Performance - Elapsed Time to Hearing

Mr. Young reported that average elapsed time from the request for hearing to the first conference has been reduced from seventy-five days down to sixty-six days. A year before that it was 95 days, so real improvements have been made.

Likewise, average elapsed time from the request for hearing to the first trial has been reduced -- from 184 days during the first quarter of 1997 to 151 days in the third quarter of 1997. A year before that it was at 212 days. He noted that the reduction is not caused by fewer requests for hearings. In fact, over that period there were 9,000 more requests for hearings in the third quarter of 1997 than in the first, increasing from 51,000 to 60,000. Now DWC is hearing complaints that the hearings are being set too quickly, that their calendars have already been filled.

Similarly, the delays in rating reconsiderations, which were up to six or eight months, have also been reduced to six weeks.

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DWC Regulatory Hearings

Mr. Young next reported on the regulatory hearings that were recently completed. The rehabilitation and audit regulations are expected to get out in the next three weeks or so for a fifteen-day comment period. There was not a lot of controversy on these subjects during the hearings. There was some concern from claims administration community about being asked to self-audit their claims if they had reached a certain level of violations. He said that the Division would look at the issue.

In conjunction with those regulations was a director's proposal that the Uninsured Employers Fund not pay UEF benefits to people who are here in this country unlawfully. Mr. Young indicated there was some interesting legal testimony that is being sorted out and that he is not sure what is going to happen with that proposal.

The next set of hearings had to do with the medical fee schedules -- the Official Medical Fee Schedule, the Hospital Fee Schedule and related regulations. Mr. Young said that the testimony was fairly predictable. The payers didn't want to pay any more and the doctors wanted more. He said that DWC is in the middle and will try to sort through the issues. He believes that they have proposed a structure that will put more money where it ought to be in the evaluation, the management and the reporting of these cases. He said that there didn't seem to be much controversy this time over the hospital fee schedule that they been sued over before. Everybody seems to want to get on with it. However, there was an issue about whether the contracted rate should be exempt or whether the regulations should indicate that the lower of the contract rate or the scheduled rate should apply. There seemed to be a lot of support for the latter position.

Mr. Young went on to say there were changes in the utilization review regulations that had some interesting testimony. The claims administration community believes that what is on the books is fine but the physician community believes they need more protection.

Permanent Disability Rating Schedule

Mr. Young then discussed the testimony on a proposed change to the Permanent Disability Rating Schedule (PDRS). [NOTE - the proposal was put forward in response to concerns from the community that the April 1, 1998 change to the PDRS was not cost and benefit neutral, as it was intended to be.] Mr. Young explained that the proposal, based on the Workers' Compensation Insurance Rating Bureau (WCIRB) study of the April 1, 1998 version of the PDRS, decreases the rating by 5% in order to make the PDRS cost neutral.

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Mr. Young related that there was very little support for what DWC had proposed. They were told that more information is needed before a course of action can be taken. It was pointed out that there is a cost to change as well as to the schedule and that DWC should proceed cautiously.

Mr. Young reported that they are being sued on this issue and that DWC will not be closing the record in the hearings before that litigation is concluded. He said that a couple of weeks ago a hearing was held on the litigation and DWC won that round. The next round is scheduled for January 9, 1998 in Sacramento Superior Court. DWC is asking that the litigation is thrown out and that the Association of California Insurance Companies (ACIC) be assessed sanctions for bringing what DWC believes is frivolous litigation.

Workers' Compensation Information System

Next, Mr. Young reported on the workers' compensation information system. He said that funding was approved for the project in October. Subsequently, there was a problem with the Department of Finance over permanent versus short-term funding which was only recently finally sorted out. They now agree that the system should be part of the Division's base budget and all positions should be permanent.

DWC is now in the process of obtaining an oversight contractor, which Mr. Young indicated was a state requirement when an information system is being developed. The next step in the project will be developing regulations that define the system, its implementation and the data elements to be used. Mr. Young expects to go out to hearing on those in the Spring of 1998.

Uninsured Employers Fund

Mr. Young then discussed the issue of contracting out the Uninsured Employers Fund (UEF) function. DWC had contracted with Coopers and Lybrand to take a look at the Uninsured Employers Fund and provide some recommendation on how operations can be improved and whether it should be contracted out. However, Coopers and Lybrand recommended against that. They said that it is not a claims operation and if it was contracted out to your basic third party administrator (TPA) or anybody else who does regular workers' compensation claims they would have to learn a whole new program. Coopers and Lybrand made a lot of recommendations on procedures, training and staffing that will be implemented over the next six months or so.

Commissioner Vach pointed out that the UEF does not reserve and asked how the state can justify not knowing what the exposure is. Mr. Young replied that reserving has not occurred in the program previously but was one of the recommendations of Coopers

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and Lybrand. Historically, UEF operated on a pay as you go basis. But Coopers and Lybrand recommend that the liability be determined and DWC agreed and will implement a new procedure.

Commissioner Vach opined that DWC should be working at bringing the UEF unit towards a normal claims operation. When there is an injury, the person should be paid immediately so that there isn't such a huge lag between date of injury and benefit payments. He said that he sees no justification for not having a system which essentially looks like the claims administration, granted that it must be determined whether there is coverage or not. But paying after there is an award and not paying peremptorily doesn't seem to save much money and doesn't sit right.

Mr. Young replied that UEF is a very different program and they often don't know about an injury until six to nine months after it has occurred. By the time UEF gets the claim, a lot of water has gone under the bridge. There is a fiduciary responsibility. UEF has to make sure that they are able to collect what they can from the uninsured employer. There are a lot of legal requirements that the employer be identified and many things to do to make sure that happens. He said that there is responsibility to do what can be done to limit UEF exposure to paying out General Fund dollars. He said that implementing the recommendations of Coopers and Lybrand would result in less liability. UEF is expecting to have a surplus of one million dollars this year because of things they have already done.

Commissioner Vach expressed concern that a worker is injured and no one reports anything to anyone for six to nine months. Mr. Young replied that in the case of UEF they are talking about illegally uninsured employers. A lot of time these injuries may occur to alleged independent contractors. There's an allegation that there is an independent contractor relationship and there is fighting over whether or not there is an employee relationship and whether there is coverage with the insurer of the employer. They sort through that and the worker finally finds the Uninsured Employers Fund which then gets into the mix. It is a very different kind of thing than a basic claims operation.

Commissioner Vach suggested that the presumption should then be that the injured person is an employee until proven otherwise. Mr. Young said that would need to be legislated. He said that some of the bitterest controversies are over those kinds of bills.

Commissioner Vach stated that he thinks the issue should be looked at. He said that he was very concerned about what he read in the report and hopes that Mr. Young will go forward with the recommendations. Casey Young assured him that he would.

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DWC Restructuring

Mr. Young then reported on the restructuring of the Division of Workers' Compensation. He said that the Division continues to work on three components of the KPMG report. One is the technological recommendation, one is the business process recommendation, and one is the organizational recommendation.

A year was spent reviewing and documenting what the control agencies wanted to see in terms of the technological recommendations and DWC submitted a new feasibility study report to them this summer. Unfortunately, no FSRs will be considered until the year 2000 requirements have been met. It appears that it will be another year until DWC can proceed with these recommendations.

DWC has also reviewed what changes in its business processes and organization will improve the way it does business. They concluded that DWC does two basic kinds of things -- one function is to support the claims administration process and the other is dispute resolution. Using these two functions, DWC has proposed several changes in structure and organization.

They have suggested that dispute resolution be handled in the district offices and that the presiding judges, under the regional manager structure, have all of the needed resources to carry out that function. This means continuing the support personnel that they have now such as the judges, reporters, clerks and so forth and also putting Rehabilitation Unit under the management of the Presiding Judges since they are primarily responsible for dispute resolution. Because the Disability and Information & Assistance Units perform both functions, staff will be split between the district and regional offices.

The function of claims administration support will be better managed and organized by creating some regional centers, which will have phone banks to provide information and resolve misunderstandings to the extent possible. They will also be responsible for summary ratings, which will result in a smaller number of centers doing that job and thus more consistency and better supervision. These regional centers will also perform educational outreach to the community and will be staffed partly with disability evaluators and information and assistance officers.

Another piece will be the creation of a policy development and training unit in headquarters. This unit would maintain the policy and procedure manuals that DWC has had difficulty maintaining in the past with the current structure and staffing. The staff would maintain the permanent disability rating schedule, the rehabilitation guidelines, and those kinds of things as well as education outreach coordination and

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performing audits of the rehabilitation and disability functions in the district offices to ensure consistency.

Some personnel issues will also be addressed. DWC would like to provide the presiding judge with an office manager to help with the paperwork and coordination of the work at the local office. It would like to combine the current classifications of Workers' Compensation Consultant and Rehabilitation Consultant in an effort to move toward a more versatile consultant which can do ratings, rehab conferences, and perform the information and assistance function. Currently, there are very specialized units, which create bottleneck problems, are not as versatile for management, and are not as interesting for employees.

The expected advantages of such a reorganization include greater accountability, greater consistency in ratings, more consistency in the information being provided to the public, improved telephone service, and greater consistency in DWC policies and procedures.

Currently, the reorganization is undergoing conceptual fine-tuning which is expected to be concluded in late January. The first regional center is expected to open in Santa Ana in the spring. The Lien Unit is being closed now that the backlog has been cleared. Each office is now expected to be able to handle its lien filings. This will free up existing space in which to house the pilot regional center.

Mr. Young concluded his presentation with the information that a new and improved DWC web page is now available on the Internet.

Commissioner Vach asked Mr. Young to explain the "Year 2000 problem". Mr. Young explained that it is a priority given by the state to ensure that information system projects are Year 2000 compliant. They will not review any feasibility study reports until that condition is met. He said that the Department has received funding for the Year 2000 project and has been working on it.

In response to Commissioner Vach's inquiry about how this affects the information system, Mr. Young stated that the information system is already approved and will be implemented regardless of the Year 2000 priority. What is in question is the KPMG recommendation for an integrated computer system that provides for an electronic claim file with all the information about Rehabilitation, DEU and claims adjudication in one file that one can attach notes to and accepts scanned documents. That is what the feasibility study report recommended and what the state is not willing to go forward with until the year 2000 issue is taken care of.

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Commissioner Vach observed that the recommendations in the RAND report for a fast track system or Dr. MacKenzie's suggestion for a paperless rating system may make the electronic claim file obsolete.

Mr. Young replied that even though technology is progressing at a pace where things become outmoded fairly quickly, he doesn't see the connection. He said that his understanding of the RAND suggestion of a smart system for doctors' reports was an Internet kind of technology where doctors could call up, fill out and send a form on the Internet. That doesn't seem like a technology that would be difficult to implement or is at odds with what DWC is doing.

Commissioner Vach expressed concern that nothing in the DWC reorganization plans deals directly with modernizing the claims process itself. He said that none of the outmoded language in the Labor Code is being addressed nor are audit finding suggestions that carriers aren't doing things right because they don't understand the complex rules and regulations. It doesn't seem as if this larger system-wide problem is being addressed in this administration and Mr. Vach asked if Mr. Young had any thoughts about suggesting that it be addressed by the next administration.

Mr. Young replied that he would address the issue when he can. He said that everyone is frustrated with all of the changes that have occurred already and that he wasn't sure that there was the appetite in the community for another big change. Right now is the time to keep working with what we've got and try to make it work the best we can. He said that if he had carte blanche to do whatever he wanted with the system, then he would look at modeling it after the Texas system. In Texas one Commission has the responsibility of the entire system including adopting rules and regulations. In California, the responsibility is scattered which creates inconsistency.

Commissioner Vach observed that the KPMG recommendations are two years old but are just now being implemented. He suggested that if plans aren't made soon to put into place some mechanisms to review all of the issues in the system then it will be well into 2010 with no progress.

Mr. Young replied that he has a time horizon of about a year. His focus during this time is the information system and the reorganization. That's not to mean that there aren't other issues to deal with. There are others in the system who may be around much longer than a year and who can work on those issues. He said that he would encourage the Commission to look at other jurisdictions and how they organized their administrative apparatus in coming up with recommendations.

Commissioner Steinberg asked for further clarification of the reorganization plan. Mr. Young replied that DWC is organizing the work of the Division along functional lines,

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dispute resolution and claims administration support, and then allocating the staffing necessary to do that. People will go to the district offices for dispute resolution and the regional centers for information. The staff will be cross-trained which will allow for better utilization of resources.

Commissioner Steinberg asked what the function of the regional centers would be. Mr. Young stated that they will contain phone banks to answer questions from the public. There has been tension in the district offices because of the different missions of different units. For example, the Disability Evaluation Unit has a responsibility to support the litigation process as well as support the summary rating process. Because there is no onsite supervision of the disability evaluators in most offices, they are often pulled one way or the other depending on the priorities of the day, who is there, and who is in their face demanding service. This same problem occurred in the Information and Assistance unit.

Mr. Young explained that the restructure plan provides part of the resources to the presiding judge to support the litigation process in the district office under the supervision of the presiding judge and puts another piece of that resource in the regional centers to do the work of the summary ratings. In other words, it splits the staff between the regional and district offices.

V. Report on the 24-Hour Care Program - Gerald F. Kominski, Ph.D.

Ms. Baker announced that Dr. Kominski had to postpone his presentation due to a death in the family. This item was deferred to another meeting date.

VI. Report on the Permanent Disability Summit; Update and Discussion Regarding Commission Studies and Projects Christine Baker, Executive Officer

Permanent Disability Summit

Ms. Baker reported that there were three hundred attendees at the Commission's Permanent Disability Summit held November 21, 1997 in South San Francisco. She said that the completed evaluation forms overall commended the Commission for putting on a valuable program. The summit was rated in the 'very good' to 'excellent' range in all categories. Several participants noted that some of the afternoon speakers did not stick precisely to the topic at hand, but most agreed that the diversity of viewpoints and opinions were extremely helpful.

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Permanent Disability

The first meeting of the CHSWC Permanent Disability Policy Advisory Committee was held November 18, 1997. Co-chaired by Commissioners Rankin and Vach, the Committee was formed to evaluate the findings and recommendations of the RAND report and comment from the community.

A PD Technical Advisory Committee of experts in the field was also formed. However, it was decided that the Technical Committee would only be used on an ad-hoc basis because the group proved too unwieldy to accomplish any tasks and attempted to drive the policy rather than respond to the PD Policy committee.

The first meeting of the Commission's PD Policy Advisory Committee determined that additional information was needed before moving forward with the RAND recommendations. The Committee established the following goals:

- Efficiently decrease uncompensated wage loss.
- Increase the number of people promptly returning to sustained work.
- Reduce the transaction and friction costs including costs to injured workers.

In addition, discussions by the Policy Committee, the Technical Committee or the public meeting on RAND's PD study methodology have posed some of the following tasks and issues:

- The Temporary Disability period should be removed from the calculation of wage loss. RAND included TTD period of wage loss estimation and the TTD payments and TTD period in the ranked compensation for wage loss estimated.
- The study lacked some demographic variables such as age, occupation, industry and injury data.
- The self-insured employers felt strongly that their data had not been included in the study and urged the Commission to include their data.
- The small employers that were not included because there was not a control group available should be looked at. The study could pool some of the smaller employers to obtain controls.
- The study took place during an economic downturn of the economy and it is important to take a look at the data and extend the analysis to look at injuries

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into 1994-95. Another possible quick alternative would be to see if there are differences between north and south because the northern part of California did not have the layoffs that the south did and did not experience such an economic downturn.

- Disaggregate the data of the analysis and look at industry, impairment, occupation, and cumulative versus traumatic injuries.

RAND has been asked to cost out some of these analyses item by item as well as to provide time lines. The study team is looking at all of these issues and will be getting back to the Commission and PD Policy Committee with recommendations for analysis. The tasks and costs will be evaluated and prioritized.

The RAND contract has been amended as decided at the last Commission meeting, but it is clear that there are more tasks than money available. Ms. Baker stated that the focus would be kept on specific tasks rather than creating a research wish list. She asked if she could have the authority to encumber between \$75,000 and \$100,000 for the purposes of addressing these questions and others to be used very carefully and discriminately as it is agreed the tasks need to be accomplished. She explained that she is requesting the encumbrance now because it is difficult to amend contracts and go through the required hoops every time it is decided to add a few dollars to a contract.

Commissioner Rankin moved to allow Ms. Baker to encumber the funds. This motion was seconded by Commissioner Vach who clarified that the amount allowable should be specified as \$75,000. All Commissioners voted in favor of the motion.

Ms. Baker reported that the next meeting of the PD Policy Advisory Committee is set for Thursday, January 29, 1998 in San Francisco.

Ms. Baker then addressed the copyright issue of the RAND publication. She reported that she advised RAND that the study must remain in the public domain. A permissive copyright will be used which states that anyone who uses any portion of the report must credit RAND and the Commission.

Ms. Baker said that she had not been 100% satisfied with some of RAND's internal policies regarding publications and distribution. She said that she is more aware than ever that she must clearly document all issues in writing. RAND has its own mission for publicity that seems to get in the way of its ability to stay low key. She said that she is working on improving this area with them but overall believes their work is excellent.

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Vocational Rehabilitation

The Vocational Rehabilitation Project is ongoing. The preliminary report issued in July of 1997 has been made available to the public and is accessible on the Internet. The study team at UC Berkeley is collecting wage loss information and will complete a worker survey in the near future. A final report on this study is expected in the Spring.

Medical Legal Study

The Commission has contracted with UC Berkeley to study the impact of the medical legal reform on California's workers' compensation system. Two reports have been released and are also available on the Internet. The study is based upon data from the Workers' Compensation Insurance Rating Bureau. The WCIRB has informed the Commission that they will continue the permanent disability survey.

Incomplete Physician Reports

The Commission has contracted with UC Berkeley to study the poor quality of physician reports for rating by disability evaluators. The study will determine the nature and magnitude of the problem, ascertain who is producing incomplete reports and why, develop quantitative analyses, provide recommendations for improving the quality of reforms, and calculate the cost benefit of changing the system.

Frank Neuhauser from UC Berkeley reported on some of the preliminary findings from the study. Mr. Neuhauser reported that the data received from the Disability Evaluation unit has been entered. He thanked the raters for the rich set of comments they provided on the reports submitted to them for evaluation.

As many people expected, the early returns show that to some extent the treating physician reports are of a poorer quality than the QME reports. In each case, the reports were evaluated without qualification. Approximately 60% of the treating physician reports were qualified by the rater or subject to qualifications. With QMEs, only 40% were subject to qualification. There is still a problem with the QME reports but it is more serious for the treating physicians.

Mr. Neuhauser reported that he will evaluate exactly what those issues are with each set of reports and come back to the Commission with a set of recommendations for how specific problems should be addressed. In addition, preliminary findings show that approximately 50% of the submitted reports are from treating physicians and that approximately 20% of the reports are from QMEs not listed by the IMC as Qualified Medical Examiners. These are all issues that will be looked at. A report should be available within a month.

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Prototype Information

The Commission contracted with the Labor Occupational Health Program for the development of prototype instructional written materials and video on the workers' compensation system. Ms. Baker reported that the Commission is working with DWC and an advisory group from the workers' compensation community to provide recommendations for such materials. The results of developing these written materials in conjunction with this working group have been well received.

The final prototype materials are almost completed and it is anticipated that they will be widely used. There has been a recommendation from the Prototype Advisory Committee that these materials be made available through DWC's Information and Assistance offices. At its meeting in April 1997, the Commission voted to encumber funds to facilitate the distribution of these materials to California's employers and workers. The Commission staff has since explored the feasibility of piggybacking on various conferences to be hosted by the community to disseminate the information rather than hosting its own conference.

Study Group on Young Worker Health and Safety

The Commission is funding a statewide task force known as the California Study Group on Young Worker Health and Safety. It is charged with coordinating strategies to protect young people from work related illness and injury. The study group is composed of groups and individuals dealing with California youth employment and education issues as well as others who can play a role in educating or protecting young workers.

The group held its latest meeting in December when the members reviewed the recommendations developed to date by the group and worked on refining recommendations for the final report. They are developing recommendations for school-based strategies, strategies for employers, strategies for enforcement agencies, and a statewide public awareness campaign. The project has been a positive and productive experience. It provides a forum for all these various agencies and enforcement entities to share information and make recommendations to improve young worker health and safety. The study group, by Commission vote, has been extended through 1998.

Illegally Uninsured Employers

The Commission has published an issue paper on various methodologies to identify employers illegally uninsured for workers' compensation and bring them into

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compliance. The issue paper includes recommendations for the identification of illegally uninsured employers, to bring them into compliance, and to have all employers report their federal employer identification number (FEIN) for all new policies renewals to the WCIRB. Ms. Baker stated that she was pleased to report that the WCIRB has been extremely cooperative and proactive in working out the details for collection of the FEIN and will be working with the Department of Insurance to change regulations in order to collect the FEIN. The FEIN is critical to insure that the matching between EDD and WCIRB is more accurately done. WCIRB held a working group meeting on the collection of the FEIN and Commission staff has been working with them and conferencing with the State of Colorado who has already implemented a very comprehensive and successful targeting uninsured employer program. The MOU with the Department of Insurance has been signed and the pilots will continue.

Mr. Neuhauser added that the WCIRB has done its evaluation of experience-modified employers who do not appear as having coverage or did not respond to questions for information. Those names have been forwarded to DLSE for matching with EDD data and will be followed up if they have wages reported in the quarters when they were not covered. At the same time, because of the MOU, EDD will now draw a sample to match up different target employers including new employers from specific industries, as well as a sample from all employers, to compare the coverage records. This will allow the estimation of the size of the uninsured employer problem.

Chairman Rankin asked if there were any need for legislation to better enforce the laws against uninsured employers. Ms. Baker replied that there was proposed legislation that would improve the enforcement. But a lot can be accomplished administratively through the matching of records. The Department of Insurance will be doing regulatory changes in order to allow that to happen and the Department of Industrial Relations has indicated that it is a high priority item for them as well. She said that it appears to be on track but it is the Commission's wish with regard to the legislative package.

Commissioner O'Hara asked if Ms. Baker were requesting additional funding for the project. She replied that she wasn't seeking more funds at this time but at some point, if the pilot is successful, the compliance effort will need to be increased and funds will be needed to support it.

Ms. Baker said that Colorado was able to get 95% compliance with employers using the matching system. Based on the Colorado experience of collecting an additional one hundred million dollars of premium, we can estimate there may be about nine hundred million dollars in California premiums to be collected.

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Commissioner Rankin introduced a motion for the Commission to instruct Christine to work on preparing whatever legislation might be needed to deal with the problem of uninsured employers.

Commissioner Vach argued that although the problem is so acute as to necessitate legislation, we don't know yet how to identify and track the uninsured which is needed to make the point to the legislature and employer community that the problem is as large as we think. He suggested that the identification process continue before legislation is introduced.

Commissioner O'Hara seconded Commissioner Rankin's motion stating that there is only a small window of opportunity to introduce legislation. The deadline to introduce legislation is January 15, 1998.

After further discussion, it was decided that legislation would be introduced before the deadline and will be reviewed at the March meeting of the Commission to make changes or modifications.

Carve-Out

The Commission voted unanimously to design and carry out the evaluation of collectively bargained workers' compensation programs in the California. The Commission has initiated a collaborative project with the Survey Research Center, the Haas School of Business and a member of the Stanford Alternate Dispute Resolution group. The final report is expected in January 1998.

DWC Liens

Ms. Baker reported that a site visit was made to the DWC Lien Unit in Santa Ana. The purpose of the visit was to evaluate information concerning the timing, parties to, and future trends in lien workloads. Staff reviewed WCAB files for additional information such as issues of timing and the use of the dispute resolution process. Staff also tested data collection tools for future evaluations. It was noted by the majority in the lien unit that many liens can be avoided if handled by the judges at the time of hearing. But there also seems to be an ongoing problem with regard to proper notice at the time of the hearing.

Another observation that was made was that liens are being settled without the case in chief at the lien unit. The lien units will be closing down and will be handled by the original office, which is probably good, because the case in chief is their original office. However, Commission staff is not sure that the lien problem is totally over. Ms Baker recommended that the Commission continue to review the process because it has been

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such a major problem in the past. In addition, the Commission could do a more thorough study that provides for a randomized sample and information about what is happening with the liens and files. In order to do a systematic study, the Commission needs to request a half-day clerical time per office from DWC to be used for data collection purposes. In addition, the recommendations made by Larry Swezey during the roundtable still stand. These recommendations included placing limits on the filing of liens, requiring the prompt disposition of the lien claims, and requiring all of the information to be provided at the MSC hearing.

The options before the Commission are to support the current proposal or to continue to study the lien issue.

Commissioner Vach stated that the issue has been studied extensively and the problem needs to be dealt with. There are people in the provider and applicant attorney community who don't like the recommendations. But the fact is that 75% of Declarations of Readiness filed in the L.A. Board are for the resolution of liens. He suggested that the Commission go forward with the established recommendations.

Commissioner Hlawek commented that his recollection was that the Commission produced a statistically valid report. He questioned whether going back in would give the Commission any more significance in terms of validity.

Ms. Baker clarified that Mr. Swezey's recommendations still stand but that further study would provide more data to support them. In order to do a further study then the Commission would need resources from the DWC.

Commissioner Steinberg recalled that there were strong objections to the recommendations made by the provider community raising some procedural due process arguments. He remarked that his recollection was that the issue had been left hanging because the Division of Workers' Compensation was going to have the backlog cleaned up in six months.

Ms. Baker replied that the six months are up and staff has gone in and determined that the recommendations are still valid. She indicated that the time limit of filing liens was not a major topic since it allows five years to file a lien. This gives the board a prompt disposition of the cases rather than having the case be heard and then two years down the road hear the lien issue. If it is connected to the case within a certain time period, it all gets resolved at the same time. Putting off the liens is what causes the backlogs.

As for the notification issue, notices are distributed to the various parties by the parties and then the notices need to be done again by the Division of Workers' Compensation.

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So it seems that they should be done right the first time and notice should be provided to all the parties and handled within a limited time period.

Commissioner Hlawek agreed but stated that he doesn't want to use the Commission's limited resources on an issue that has already been visited.

Chairman Rankin asked if any member of the audience had any comments on the topic.

Mark Marcus of the California Applicants' Attorneys Association commented that his organization had concerns about the Commission's recommendations. It is possible that the time for the lien claimant to file under the proposed legislation would have expired by the time an injured worker's case gets to trial. So if a client's right to medical treatment, AOE-COE, and a number of issues is being tried and there are potentially huge medical bills out there which by the time it takes to get to trial are somehow nonrecoverable. This is in the face of the litigated case where the defendant, the insurance carrier or TPA or self-insured employer knew all along whom these providers are and had every ability during the discovery process to provide reasonable liens or inquiring to the nature of the medical bills provided.

Carlyle Brakensiek with the California Society of Industrial Medicine and Surgery stated that his organization also had concerns about the recommendations. There are a number of potential claims out there; if you establish a deadline for them, you are going to put a tremendous burden on providers to make a massive effort to go back through the records to take all this information out. Concurrently, it will encourage a flood of liens by imposing this deadline whereas it may be better to just let them lie and they will eventually go away.

Commissioner Steinberg stated that the testimony recalled to him the fact that the last time the Commission visited this area a lot of things were up in the air. In the mean time, the lien problem was supposed to have been resolved.

Ms. Baker responded that it was a Commission project and because staff had gone into the district offices to look at the liens, they were in a dilemma whether to continue researching and getting further data or moving ahead with the proposal as prepared by Mr. Swezey.

Commissioner Steinberg asked if it was possible to resolve some of the issues brought up today through the advisory group.

Commissioner Vach pointed out that there was still the problem of the legislative calendar.

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Mr. Swezey recommended that legislation be submitted on the noncontroversial issues to mark a place and it can be amended later to include other items as they are worked out.

Commissioner Rankin introduced Mr. Swezey's recommendation as a motion. Commissioner O'Hara seconded the motion, which passed with no objections.

Anti-Fraud Activities

Ms. Baker reported that the report of the Commission's Anti-Fraud Activities is available to the public and is accessible on the Internet.

VIII. Other Business/Public Questions/Comments

Commissioner O'Hara asked if a list of Summit attendees could be made available to all Commissioners. Ms. Baker replied that staff would send a listing to each Commissioner.

Linda Berg

Linda Berg, an injured worker, indicated that she wanted to address things that DWC AD Casey L. Young had said regarding what injured workers want. She asked how Mr. Young knew what the community wanted, since he has been mostly inaccessible by both phone and letter.

Ms. Berg also requested that copies of the Santa Rosa Press Democrat series on the injured worker be made available at all District Offices. She said that many injured workers are not kept informed.

Commissioner Vach responded that the Commission is attempting to deal with this issue by the publication of pamphlets and video. He also noted that the Commission cannot endorse an individual periodical.

Ms. Berg complained that while Commission meetings are public hearings, there were only two injured workers in attendance. She attributed this to the fact that injured workers are not recruited to attend.

Ms. Baker responded that the Commission has requested that meeting notices be posted at every Information and Assistance office in order to reach injured workers. DWC is complying with that request. There is also a mailing list of over 2,200 people who receive the notice, which is also available on the Internet.

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Ms. Berg pointed out that the system needs simplification. She stated that there is something wrong with a system that is profitable for all of the players except those it was designed to benefit, the injured workers.

Uros Jelacic

The next public speaker was Uros Jelacic, an injured worker. He requested that the Commission review several points that he made at previous Commission meetings. He indicated that he would send those points in writing to Commission staff.

VIII Adjournment


The meeting was adjourned at 12:30 p.m. by Commissioner Vach (Chairman Hlawek had to leave the meeting just before public comments).

Future Meetings

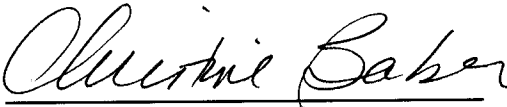
The next meeting of the Commission will be held on Thursday, March 12, 1998 at 10 a.m. in the Department of Health Services, 714 "P" Street, Office Bldg. 8, Auditorium in Sacramento.

Approved:

Respectfully submitted,



Tom Rankin, Chairman Date



Christine Baker, Executive Officer